

Risk Management



Risk Management Issues When Taking Locum Tenens Assignments

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This ongoing column is dedicated to providing information to our readers on managing legal risks associated with medical practice. We invite questions from our readers. The answers are provided by PRMS, Inc. (www.prms.com), a manager of medical professional liability insurance programs with services that include risk management consultation, education and onsite risk management audits, and other resources to healthcare providers to help improve patient outcomes and reduce professional liability risk. The answers published in this column represent those of only one risk management consulting company. Other risk management consulting companies or insurance carriers may provide different advice, and readers should take this into consideration. The information in this column does not constitute legal advice. For legal advice, contact your personal attorney. Note: The information and recommendations in this article are applicable to physicians and other healthcare professionals so “clinician” is used to indicate all treatment team members.

QUESTION

I am between jobs in my professional practice. During this time period, I am considering taking a locum tenens assignment. Does locum tenens work pose professional liability risks for psychiatrists?

ANSWER

Many psychiatrists opt to practice by accepting locum tenens assignments. Such an endeavor can be fulfilling and allow psychiatrists to begin or continue to practice without the overhead and other headaches of operating a private practice. Locum tenens assignments can be a great way to launch careers after completing residencies or fellowships or to continue practicing after retiring from rewarding careers in private practice. Mid-career psychiatrists often accept locum tenens assignments for extra income or while between jobs. Of course, some psychiatrists enjoy the variety of practice settings that locum tenens assignments often bring.

Taking locum tenens assignments, in and of itself, poses no special professional liability risks. However, situations can arise when taking locum tenens assignments that may not have been anticipated or considered by psychiatrists. Some of these situations can increase professional liability risks. Calls that we have handled and claims that we have defended illuminate some of the unanticipated issues faced by psychiatrists when taking locum tenens assignments. Below are a few lessons learned that may help psychiatrists who are taking locum tenens assignments avoid potential professional liability risks and other problems.

1. Confirm representations about licensure made by the locum tenens company.

Locum tenens companies typically provide some level of support for the psychiatrists they hire regarding state licensure issues. However, psychiatrists

should confirm directly with appropriate licensing bodies whether a particular license will be required for the assignment. Obviously, this includes a license to practice medicine if you accept an out-of-state assignment. As one physician found out, relying solely on an employer to determine legal requirements can be a costly mistake. An Ohio physician permanently lost her medical license for issuing prescriptions to patients without an in-person examination. She had been assured by her employer's CEO that the manner of prescribing was legal. Additionally, an attorney for a national telemedicine organization assured her that the manner of prescribing was proper and legal. When the Ohio appellate court upheld the medical board's revocation of her license, the court noted that she "did not consult with any other attorney, nor did she contact anyone with the board to determine whether prescribing medications over the internet was permissible in Ohio."¹

2. Comply with United States Drug Enforcement Agency (DEA) and state registration.

Federal DEA registration is required in each state where controlled substances are prescribed. (Federal DEA registration covers multiple prescribing locations within one state, but it does not cover multiple states.) Additionally, states can require their own registration for controlled substance as well as for legend drugs. Under the federal Controlled Substances Act, no controlled substance may be prescribed without at least one in-person evaluation of the patient. Many states adopt this in-person evaluation requirement for legend drugs.

3. Understand each facility's definition of "close observation."

A remarkable number of claims and lawsuits against psychiatrists following inpatient suicides involve psychiatrists working at more than one facility and

confusing levels of observation. For example, "Level 1" at one facility may call for constant observation while at another facility "Level 1" means 15-minute checks. When the psychiatrist confuses his or her facility with another facility's observation levels, patients may inadvertently be given window of opportunity in which to hurt themselves.

4. Know what your signature means.

Psychiatrists often are asked to sign various forms related to patient services whether the psychiatrist performed the services or not. A psychiatrist's signature may be needed on insurance forms to attest that the patient received the billed-for treatment or on treatment plans to signify that a psychiatrist has reviewed the plan and agrees with it. A psychiatrist should review the wording of the form he or she is signing. If there is no wording to indicate what the psychiatrist's signature means, the psychiatrist should annotate his or her signature so that the services that are actually rendered are clear.² A psychiatrist's signature for peer review or quality assurance purposes, for example, should include an annotation describing what was reviewed. Signing forms without annotating the signature could be used to infer that the psychiatrist provided services he or she did not provide. An unannotated signature can be proffered to mean anything anyone—including plaintiff attorneys—wants it to mean.

5. Comply with states' and facilities' requirements.

In addition to requiring their own controlled substance registration, states can impose other requirements on licensees or registrants. If a locum tenens assignment means practicing in another state (in-person or via telemedicine), psychiatrists may be required to register with that state's prescription monitoring program, obtain continuing medical education credits, prescribe electronically, or other

requirements. Some states require checking that state's prescription monitoring program before issuing a prescription for a controlled substance. (Even if checking the prescription monitoring program database is not required before prescribing, the risk management advice is to check the database anyway. It's a valuable safety tool.) Facilities also may require privileging or credentialing prior to working there.

6. Clarify your responsibilities.

The locum tenens company should clarify psychiatrists' responsibilities before arrival at assignments. Vague terms, such as "psychiatric services," should be fleshed out. Will psychiatrists be expected to see patients outside of their subspecialty? What on-call responsibilities come with the assignment?

7. Make sure medical malpractice coverage is in place.

Locum tenens companies typically provide medical malpractice insurance coverage for psychiatrists. Psychiatrists should obtain proof of coverage. Psychiatrists should also clarify whether coverage includes all incidents and activities or is limited to the assignment location.

8. Understand the statutory and regulatory requirements for supervision.

Locum tenens assignments sometimes include supervisory duties for nurse practitioners and/or other providers. The scope of the nurse practitioner's or other provider's practice, including any prescribing authority, is defined by each state, either by the legislature and/or nursing or other licensing board regulations. States vary in the extent to which a nurse or other provider's practice is regulated and in the degree of supervision required. Additionally, the specific activities that

constitute supervision vary from state to state. Psychiatrists should have a very clear understanding of what is required by the state's nursing or other licensing board as well as the psychiatrist's own licensing board. Psychiatrists should know what is expected of them before accepting assignment or agreeing to be a supervisor and before signing-off on a form as a supervisor. Other organizations that may be involved, such as health insurance companies, hospitals and other facilities, and Medicare/Medicaid, may have their own requirements for supervision.

9. Know how to get patients admitted to a local hospital.

Psychiatrists should know the procedure for getting patients admitted to a local hospital. In some cases, involuntary admission may be required. Psychiatrists should know how to initiate an involuntary admission if needed.

10. Have a contact at the locum tenens company.

Having an easy-to-reach contact at the locum tenens company can go a long way to reducing psychiatrists' potential professional liability risks and other problems. The locum tenens company representative can clarify psychiatrists' duties and help solve disputes that arise during the assignment.

If psychiatrists accept locum tenens assignments that involve telemedicine, those psychiatrists should consider these additional, special concerns.

11. Confirm representations about licensure made by the locum tenens company.

If the locum tenens assignment involves telemedicine, remember that the practice of medicine occurs where the patient is located. Services to out-of-state patients typically require an additional medical license.

12. Comply with DEA and state registration.

If the locum tenens assignment includes telemedicine activities involving out-of-state patients, remember that under the federal Controlled Substances Act, no controlled substance may be prescribed without at least one in-person evaluation of the patient. There is a telemedicine exception to the one in-person evaluation requirement, but only for telemedicine as strictly defined by the Controlled Substances Act. Under most circumstances (greatly simplified here), to prescribe without an in-person examination, even via telemedicine, the patient either needs to be in facility with its own DEA registration or the patient needs to be in the physical presence of another provider with his or her own DEA registration. (There are other exceptions that are extremely limited.) For a more in-depth analysis of this issue, please see my colleague's commentary "Telemedicine—Still So Many Unknowns."³

13. Comply with states' and facilities' requirements.

States vary in the degree to which they regulate the practice of telemedicine; some regulate extensively, others less so. The field is also changing. States frequently enact new regulations, so psychiatrists practicing via telemedicine must keep up-to-date. Some states require an in-person evaluation for prescribing controlled substances as well as for legend drugs; some states outright prohibit the prescribing of any medication via telemedicine. Psychiatrists who fail to investigate state requirements may place themselves in peril. An Idaho doctor who prescribed an antibiotic without an in-person examination faced disciplinary proceedings by the state medical board as well as had her board certification threatened.⁴ She also had to defend herself before multiple state medical boards when those boards acted on the

Idaho Board's sanction. She was licensed in nine states. (State medical board sanctions from one state trigger reviews by every other state where a physician is licensed.)

SUMMARY

While taking locum tenens assignments, in and of itself, poses no special professional liability risks, such an endeavor does require planning and preparation—just as accepting any job does. Understanding and complying with federal, local, and facility requirements and providing good care and treatment are, as always, the best ways for psychiatrists who are taking locum tenens assignments to avoid potential professional liability risks as well as other problems.

REFERENCES

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